



DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 245, and 274a

[CIS No. 2507–11; DHS Docket No USCIS–2011–0010]

RIN 1615-AA59

Classification for Victims of Severe

Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security

ACTION: Interim Final Rule; reopening of the comment period.

SUMMARY: The Department of Homeland Security (DHS) announces the reopening of the public comment period for the Interim Final Rule titled, Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status. DHS published the interim final rule (IFR) on December 19, 2016 and accepted comments until February 17, 2017. To provide the public with further opportunity to comment on the IFR, and to ensure that we are fully considering all current factors, concerns and input of the parties who may be affected by this rulemaking, DHS will reopen the comment period for an additional 30 days. DHS will consider comments received during the entire public comment period in its development of a final rule.

DATES: The comment period for the interim final rule published December 19, 2016, at 81 FR 92266 is reopened. You must submit written comments and related material on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the entirety of this rule package, to include the related information collection requirements set forth with the 2016 IFR, which is identified as DHS Docket No. USCIS- 2011-0010, through the [Federal eRulemaking Portal](https://www.regulations.gov) <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Comments submitted in another manner, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID–19, USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using <http://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 240-721-3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Andria Strano, Branch Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240-721-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. DHS also invites comments that relate to the economic or federalism effects that might result from this rule. Comments that will provide the most assistance to DHS will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–20011–0010. Providing comments is entirely voluntary. Regardless of how

comments are submitted to DHS, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov> and will include any personal information provided by commenters. Because the information submitted will be publicly available, commenters should consider limiting the amount of personal information provided in each submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number USCIS 2011-0010.

II. Background

On December 19, 2016, DHS published an Interim Final Rule (IFR) in the Federal Register at 81 FR 92266 and received 17 public comments. USCIS amended its regulations governing the classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for T Nonimmigrant Status, *see* Immigration and Nationality Act (INA) sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). Specifically, the IFR revised DHS regulations at 8 CFR 214.11 to:

- Implement statutorily mandated changes by revising the existing eligibility requirements under the following statutes:
 - Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Public Law 108-193, 117 Stat. 2875 (Dec. 19, 2003).
 - Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162, 119 Stat. 2960 (Jan. 5, 2006).
 - William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110-457, 122 Stat. 5044 (Dec. 23, 2008).

- Violence Against Women Act of 2013 (VAWA 2013), Public Law 113-4 (Mar. 7, 2013).
- Justice for Victims of Trafficking Act of 2015 (JVTA), Public Law 114-22, 129 Stat. 227 (May 29, 2015).
- Expand the definition and discussion of Law Enforcement Agencies (LEA) to include State and local law enforcement agencies. 8 CFR 214.11(a).
- Raise the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons from 15 years to 18 years of age. 8 CFR 214.11(b)(3)(i) and (h)(4)(ii).
- Exempt applicants who are unable, due to physical or psychological trauma, to comply with any reasonable request by an LEA. 8 CFR 214.11(b)(3)(ii) and (h)(4)(i).
- Expand the regulatory definition of physical presence on account of trafficking to include those whose entry into the United States was for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking. 8 CFR 214.11(b)(2) and (g)(1).
- Allow principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members. 8 CFR 214.11(k)(1)(ii).
- Provide age-out protection for a principal applicant's eligible family members under 21 years of age. 8 CFR 214.11(k)(5)(ii).
- Allow principal applicants of any age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years of age and parents as eligible family members if the family member faces a present danger of retaliation as a result of the principal applicant's escape from a severe form of trafficking or cooperation with law enforcement. 8 CFR 214.11(k)(1)(iii) and (k)(5)(iv).

- Allow principal applicants of any age to apply for derivative T nonimmigrant status for children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the principal's escape from a severe form of trafficking or cooperation with law enforcement. 8 CFR 214.11(k)(1)(iii).
- Permit all derivative T nonimmigrants, if otherwise eligible, to apply for adjustment of status under INA section 245(l), 8 U.S.C. 1255(l). 8 CFR 245.23(b)(2).
- Remove the requirement that eligible family members must face extreme hardship if the family member is not admitted to the United States or was removed from the United States. *See* 81 FR 92282 (describing the change).
- Exempt T nonimmigrant applicants from the public charge ground of inadmissibility. 8 CFR 212.16(b).
- Limit duration of T nonimmigrant status to 4 years but providing extensions for LEA need, for exceptional circumstances, and for the pendency of an application for adjustment of status. 8 CFR 214.11(c)(1) and (l).
- Clarify that presence in the Commonwealth of the Northern Mariana Islands after being granted T nonimmigrant status qualifies toward the requisite physical presence requirement for adjustment of status. 8 CFR 245.23(a)(3)(ii).
- Conform the regulatory definition of sex trafficking to the revised statutory definition in section 103(10) of the Trafficking Victims Protection Act. 22 U.S.C. 7102(10), as amended by section 108(b) of the JVTAA, 129 Stat. 239. 8 CFR 214.11(a).
- Specify how USCIS will exercise its waiver of grounds of inadmissibility authority with respect to criminal inadmissibility grounds. 8 CFR 212.16(b)(3).

- Discontinue the practice of weighing evidence as primary and secondary in favor of an “any credible evidence” standard. 8 CFR 214.11(d)(2)(ii) and (3).
- Provide guidance on the definition of “severe form of trafficking in persons” where an individual has not performed labor or services, or a commercial sex act. 8 CFR 214.11(f)(1).
- Remove the current regulatory “opportunity to depart” requirement for those who escaped traffickers before law enforcement became involved. 8 CFR 214.11(g)(2).
- Address situations where trafficking has occurred abroad, but the applicant can potentially meet the physical presence requirement. 8 CFR 214.11(g)(3).
- Eliminate the requirement that an applicant provide three passport-style photographs. *See* 81 FR 92298 (providing reasons for the change).
- Remove the filing deadline for applicants victimized prior to October 28, 2000. Update the regulation to reflect the creation of DHS, and to implement current standards of regulatory organization, plain language, and USCIS efforts to transform its customer service practices. *See* 81 FR 92277.

DHS believes the T nonimmigrant program is an effective tool in the investigation of and fight against human trafficking, disrupting and dismantling human trafficking organizations and providing support and protection to their victims. During the reopening of the public comment period, DHS encourages comments and suggestions on all aspects of the T-nonimmigrant program and USCIS administration of the program.

DHS is reopening the comment period to allow interested persons to provide up-to-date comments on the IFR in recognition of the time that has lapsed since the initial publication of the IFR. Reopening the comment period ensures that we are fully considering all current factors, concerns and input of the parties who may be affected by this rulemaking. DHS also believes that the T nonimmigrant program will benefit from updated public comments regarding eligibility and procedures for the classification for T nonimmigrant status. Due to the lapse in time since the IFR was issued, DHS seeks to reengage the public and allow further input on the changes prior to finalizing this rulemaking. DHS will consider comments received during the entire public comment period in our development of a final rule.

Alejandro N. Mayorkas,

Secretary,

U.S. Department of Homeland Security.

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